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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/605,226	09/16/2003	Stephen J Brown	7553.00110 / 03-0910	2225

60683 7590 10/15/2010
HEALTH HERO NETWORK, INC.
2400 GENG ROAD, SUITE 200
PALO ALTO, CA 94303

EXAMINER

FUELLING, MICHAEL

ART UNIT	PAPER NUMBER
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3626

MAIL DATE	DELIVERY MODE
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10/15/2010

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Response to Rule 312 Communication	Application No.	Applicant(s)
	10/605,226	BROWN, STEPHEN J
	Examiner	Art Unit
	MICHAEL FUELLING	3626

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

1. ☒ The amendment filed on 28 September 2010 under 37 CFR 1.312 has been considered, and has been:

a) ☐ entered.

b) ☐ entered as directed to matters of form not affecting the scope of the invention.

c) ☐ disapproved because the amendment was filed after the payment of the issue fee.

Any amendment filed after the date the issue fee is paid must be accompanied by a petition under 37 CFR 1.313(c)(1) and the required fee to withdraw the application from issue.

d) ☐ disapproved. See explanation below.

e) ☒ entered in part. See explanation below.

AMENDMENTS TO THE CLAIMS: These are entered as to matters of form not affecting the scope of the invention.

DEFECTIVE OATH: The examiner has identified the 'material to examination' defect in the last paragraph of p. 1 of the 09/09/2003 oath. Applicant has requested a waiver of this defect in the oath. MPEP 602.03 permits waivers where: Minor deficiencies in the body of the oath or declaration where the deficiencies are self-evidently cured in the rest of the oath or declaration. In re Searles, 422 F.2d 431, 437, 164 USPQ 623, 628 (CCPA 1970). The identified defect is not a minor defect as it is a requirement under 37 CFR 1.56. Further, it is important to note, paragraph 3 of p. 2 of the oath makes clear the inventor's counsel explicitly intended the 'material to patentability' standard to apply to only a brief period of time. Accordingly, the requirement for a substitute oath cannot be waived. To the extent the assignee is not able to obtain the substitute oath from the sole inventor, the assignee may file a petition under 37 CFR 1.183 requesting waiver of 37 CFR 1.56.

/Robert Morgan/
Supervisory Patent Examiner, Art Unit 3626

/Michael Fuelling/
Examiner, Art Unit 3626